

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P.No.4501/2016

M/s. Bansal Construction Works Private Limited**Petitioner**

Versus

Madhya Pradesh Road Development Corporation Limited
.....**Respondents**

Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Sanjay Yadav, J.

Whether approved for reporting : Yes

Shri Naman Nagrath, Senior Advocate with Shri Ayush Dev Bajpai, Advocate and Shri Qasim Ali, Advocate.

Shri P.K. Kaurav, Advocate with Shri Aditya Khandekar, Advocate for the respondent No.1.

Shri A.Rajeshwar Rao, Advocate for the respondent No.3.

Date of Decision : 21.3.2016

ORDER

{21.3.2016 }

Per: A.M. Khanwilkar, Chief Justice:

Heard counsel for the parties.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the rejection of the bid given by the petitioner being nonresponsive due to shortage of technical capacity, as communicated to the petitioner vide letter

dated 28.02.2016 (Annexure-P/3). The petitioner has prayed for a direction against the respondent No.1 to permit the petitioner to participate in the ongoing bidding process. However, during the pendency of this writ petition, letter of intent was issued in favour of the respondent No.3/Company and an Agreement has also been executed in favour of the said respondent. As a consequence, the petitioner has amended the prayer clause and has asked for a further relief that the Agreement executed in favour of the respondent No.3/Company be declared illegal and instead the contract in question be awarded to the petitioner being the lowest bidder.

3. The backdrop in which present petition has been filed, can be briefly stated as follows. A Concession Agreement was executed in favour of M/s. Transstroy Bhopal-Berasia-Sironj Tollways Private Limited for construction of road on section of SH-23 from Chainage Km. 4.100 to Km.110.420 (Design length 106.320 km) to two lane with paved/hard/hard shoulder road in the State of Madhya Pradesh, on BOT basis. That agreement was terminated by the respondent No.1, on 25.08.2015. However, due to assurances given by the Concessionaire that balance work would be completed within December, 2016, termination order was

revoked on 04.12.2015. The said Concessionaire having failed to meet the requisite time lines, once again Concession Agreement in its favour was terminated on 21.01.2016; and a fresh tender process for construction of that road on EPC basis after taking administrative approval, was commenced on 21.01.2016 itself. The said Concessionaire challenged the termination of Concession Agreement vide order dated 21.01.2016, by way of W.P.No.4884/2016, which, however, was confined to prayer clause 7(iii) of the said petition – limited to issuing direction to the Appropriate Authority to consider his representation in terms of Article 44 of the Agreement. The said writ petition No.4884/2016 was disposed of on 17.03.2016. As a result, it became necessary to examine the claim of the present petitioner as to whether rejection of petitioner's bid is for just and proper reason.

4. As aforesaid, the petitioner's bid has been rejected as it was found to be nonresponsive bid due to shortage of technical capacity. The challenge in this petition, therefore, revolves around the correctness of that view taken by the Appropriate Authority of respondent No.1 in the context of the terms and conditions specified in the tender notice. An incidental issue also arises as to whether the respondent No.1 has hastened the tender process to

award Contract to the respondent No.3, for reasons best known to the respondent No.1. It is alleged that from the circumstances available on record, it is an obvious case of *mala fide* exercise of power, in law.

5. For analyzing these aspects, we may straightway advert to the relevant Clauses of the tender document. Clause 1.1.7 reads thus;

“1.1.7 The Authority shall receive BIDs pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP (collectively the “**Bidding Documents**”) and all BIDs shall be prepared and submitted in accordance with such terms on or before the BID due date specified in Clause 1.3 for submission of BIDs (the “**BID Due Date**”)”

6. Clause 2.1.5 reads thus;

“2.1.5 The BID shall be furnished in the format exactly as per Appendix-I i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB. BID amount shall be indicated clearly in both figures and words, in Indian Rupees in prescribed format of Financial Bid and it will be signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.”

7. Clause 2.1.17 reads thus;

“2.1.17 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest

financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purpose of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.”

8. The most relevant condition which resulted in rejection of petitioner’s bid can be found in Clause 2.2.2.2, which reads thus;

“2.2.2.2 Technical Capacity

- (i) For demonstrating technical capacity and experience (the **“Technical Capacity”**), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof is more than [Rupees 562.00 crore (Rs. Five hundred sixty two crores)] (the **“Threshold Technical Capacity”**)
- (ii) Provided that at least one similar work of 50% of Estimated Project Cost Rs.112.41 crore (Rupees One hundred twelve crore and forty one lacs) shall have been completed from the Eligible Projects in Category 1 and / or Category 3 specified in Clause 2.2.2.5. For this purpose, a project shall be considered to be completed, if more than 90% of the value of work has been completed” and such completed value of work is equal to or more than 50% of the estimated project cost.”

9. It may be useful to advert to Clause 2.2.2.7, which reads thus;

“2.2.2.7 Submission in support of Technical Capacity

- (i) The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- (ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.
- (iii) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-IA.”

10. We may also refer to Annexure-II appended to Appendix IA of the tender document, on which, reliance has been placed by the petitioner. The same reads thus;

“Appendix IA
Annex-II”

ANNEX-II

Technical Capacity of the Bidder[@]

(Refer to Clauses 2.2.2.2, 2.2.2.5 and 2.2.2.7 of the RFP)

Applicant type	Project Code*	Category ^s	Experience** (Equivalent Rs. Crore) ^{ss}		Technical Experience ^t
			Payments received for construction of Eligible Projects in Categories 3 & 4	Value of self-construction in Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)

Single entity Bidder or Lead Member including other members of the Joint Venture	a				
	b				
	c				
	d				
	e				
	f				
Aggregate Technical Experience=					

@ Provide details of only those projects that have been undertaken by the Applicant, or its Lead member including members in case of joint venture, under its own name separately and / or by a project company eligible under Clause 2.2.2.6(i) (b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 2.2.2.6(i)(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 2.2.26(ii). In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

** Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

\$ Refer Clause 2.2.2.5(i)

*** Construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/EPC contract for the project. In no case shall the cost of maintenance and repair, operation of Highways and land be included while computing the Experience Score of an Eligible Project.*

\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees [50 (fifty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60(sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

£ In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 2.2.2.5(ii) and the product thereof shall be the Experience Score for such Eligible Projects.

NOTE: In case of a Joint Venture, information in Annex-II and Annex-IV of Appendix-I shall be provided separately for other Members so as to establish that each such Member has 30 percent or more of the Threshold Technical Capacity. Such information may be provided as Annex-IIA, Annex-IIB, Annex-IVA and Annex-IVB respectively (*Refer Clause 2.2.2.4.*)”

11. The petitioner relies on Chart Annexure-P/2 to assail the impugned decision of the respondent No.1 in rejecting the bid submitted by the petitioner. The same reads thus;

BANSAL CONSTRUCTION WORKS PVT. LTD.			
NOW:- Rehabilitation and Up-gradation of Bhopal-Berasia-Sironj Section of SH-23 from Chainage Km. 4.100 to Km. 110.420 (Design length 106.320 km) to two lane with paved/hard/hard shoulder road in the State of Madhya Pradesh on Engineering Procurement and Construction (EPC) mode			
Project Cost: 224.82 Cr.		LDOP: 22.02.16	LDOS:
23.02.2016			
Sr. No.	Qualification	Required (Rs.in	With BCWPL (Rs. In Crores)
1	Technical Capacity: The Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof is more than [Rupees 562.00 Crore] (the ‘Threshold Technical Capacity’) Page No. 00 {Clause 2.2.2.2 (i)}	562.00	565.50 (Upto 13/02/2016)
2	Provided that at least one similar work of 50% of Estimated Project Cost Rs.112.41 Crore shall have been completed from the Eligible Projects in Category 1 and / or Category 3 specified in Clause 2.2.2.5. For this purpose, a project shall be considered to be completed, if more than 90% of the value of work has been completed and such completed value of work is equal to	112.41	234.55 (DAMOH-KATNI)

	or more than 50% of the estimated project cost. Page No. 00 {Clause 2.2.2.2 (ii)}		
3	Financial Capacity: The Bidder shall have a minimum New Worth (the “Financial Capacity”) of Rs.22.48 Crores at the close of the preceding financial year. Page No. 00 (Clause 2.2.2.3)	22.48	96.83 (2015-16)
4.	Bid Capacity: (A*N*2-B) Page No. 00 {Clause 2.2.2.1}	>224.82	Bid Cap.=(A*N*2-B) A=252.69 Cr. (2015-16) N= 24/12=02 Yrs B=168.53 Cr. Bid Cap= (252.50*1)*2*2= 168.53)=842.23 Cr.

12. The respondents have filed reply-affidavit and refuted the claim of the petitioner. They assert that the rejection of petitioner’s bid was for valid consideration and not being arbitrary, unreasonable or *mala fide*, as is contended. The respondent No.1 contends that the Appropriate Authority has rejected the bid submitted by the petitioner on application of the relevant provisions and on the basis of indisputable facts. In that, the petitioner submitted financial information for financial years between 1.4.2011 - 31.03.2012 to 1.4.2015 - 15.2.2016, which was duly considered. The petitioner did not comply with the conditions specified in the tender document of submitting financial information for period over the past 5 (Five) financial years

preceding the Bid Due Date indicating that it has received payment for construction of eligible Projects or has undertaken construction work by itself in a PPP project such that the sum total thereof is more than Rs.562 Crores. This has been specified as “Threshold Technical Capacity”. In other words, the petitioner failed to furnish financial information for the period between 1.4.2010 till 31.3.2011, which was essential to qualify the Threshold Technical Capacity. Further, financial information for the period from 1.4.2015 to 15.02.2016 is of no consequence; and in any case could not be reckoned for scrutiny of the bid to ascertain the compliance of Threshold Technical Capacity of the bidder. If the financial information for that period of the petitioner was to be excluded from consideration, the petitioner did not fulfill the criteria of turnover of sum total of Rs.562 Crores. It is also asserted in the reply-affidavit that 7 bids were found qualified and remaining 2 (including of the petitioner) were found disqualified having failed to furnish financial information for the period between 1.4.2010 to 31.3.2011. According to respondent, if the interpretation given by the petitioner to Clause 2.2.2.2 of the tender document, in particular, was to be accepted it would mean that only two bids out of 7 bids had qualified the Threshold Technical

Capacity, which contention must be rejected.

13. Having considered the rival submissions, the entire matter revolves around the true meaning of Clause 2.2.2.2 being qualification for Threshold Technical Capacity. From the plain language of the said condition, it is seen that the bidder was expected to submit financial information for the past 5 (five) financial years preceding the Bid Due Date. The Bid Due Date is specified in the tender document as 24.02.2016 – of physical submission of bid.

14. The moot question is : the true meaning of the expression “over the past 5 (five) financial years preceding the Bid Due Date”. Should it be reckoned from 01.04.2010 - 31.03.2011 till 01.04.2014 - 31.03.2015 as claimed by the respondent No.1 or from 01.04.2011 - 31.03.2012 up to 01.04.2015 - 15.02.2016 as asserted by the petitioner? The expression “Financial Years Preceding” will have to be given its correct meaning. The “Financial years preceding” is linked to the “Bid Due Date”. The petitioner in the writ petition has not disclosed as to what financial year has been followed by the petitioner. We would assume that petitioner follows financial year from 1st April to 31st March. Clause 2.1.17 of the tender document assumes

significance and would explain the expression found in Clause 2.2.2.2 of the same document. In Clause 2.1.17 which opens with non-obstante clause, it is stipulated that in the event the Bid Due Date falls within three months of the closing of latest financial year of the bidder, the bidder “shall ignore” such financial year for the purpose of its bid and furnish all information and certification with reference to 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. It is further clarified for avoidance of any doubt, that financial year shall, for the purpose of its bid would mean the accounting year followed by the bidder in the course of its normal business. In no circumstance, the petitioner can claim that the financial information between 01.04.2015 to 15.02.2016 would be covered by this stipulation. The financial year required to be furnished is for the entire financial year and which must be over the past 5 (five) financial years “preceding the Bid Due Date”. No other construction can be given to these stipulations. It is not a provision for giving information of preceding 5 (five) years before the Bid Due Date. Instead, it is made very explicit that the financial information must pertain to over the past 5 (five) financial years “preceding the Bid Due Date”.

15. Realizing this difficulty, the petitioner has been advised to contend that the bid due date prescribed in the bid document was 23.02.2016, which does not fall within three months of financial year ending on 31.03.2015; and, therefore, Clause 2.1.17 of the bid document was not applicable to the case of the petitioner. Accordingly, the turnover information and certification for calculating technical capacity of the petitioner for the period 1.4.2015 to 23.02.2016 should also be reckoned. This plea can be discerned from communication sent by the petitioner dated 28.02.2016 at page 97 of the paper book.

16. Accepting this contention would be doing violence to Clause 2.2.2.2 read with 2.1.17 of the tender document. On this finding, the financial information furnished by the petitioner for the period 01.04.2015 to 23.02.2016 – by no standards can be taken into account for demonstrating the technical capacity and experience of the petitioner as Threshold Technical Capacity. If that information is to be excluded, the bid submitted by the petitioner contained financial information only for 4 (four) financial years between 01.04.2011 - 31.03.2012 to 01.04.2014 - 31.03.2015 respectively. That information does not fulfill the requirement of furnishing the financial information over the past 5

(five) financial years “preceding the Bid Due Date” to qualify the Threshold Technical Capacity.

17. The Counsel for the petitioner heavily relies on the decision of the Supreme Court in **B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd. and Others**¹. He submits that, what is required to be considered for the purpose of technical capacity of the bidder is to ascertain the physical capability of the bidder to carry out the work stipulated in the tender document. The project cost in the present case is around Rs.224.82 Crores. The petitioner was already engaged in execution of at-least four Projects of the same type, including of the respondent No.1.

18. The question is: whether the exposition of the Supreme Court in the abovesaid decision, pressed into service, is of any help to the petitioner. In our opinion, the dictum of the Supreme Court in the said decision is in the context of facts of that case. In that case, the notice inviting tender provided that the bidder should have executed the work of total minimum quantity of 5 (five) million metric tons per year for preceding 5 (five) years. Further, the bidder should produce a valid proof of payment of provident fund contribution of 100 personnel during the last financial year. The decision of the Supreme Court, pressed into service, therefore,

¹ (2006) 11 SCC 548

rests on the facts of that case. In the present case, however, the tender condition regarding Technical Capacity of the bidder is explicit and in no uncertain terms mandates that the bidder shall submit financial information pertaining to period “over the past 5 (five) financial years” “preceding the Bid Due Date”. Suffice it to observe that on a fair and holistic interpretation of tender conditions in the case on hand, there is no scope for argument that financial information furnished for the period between 01.04.2015 to 15.02.2016 can be reckoned as financial information for the whole of financial year preceding the Bid Due Date.

19. Notably, to buttress the argument, the respondents have placed on record that the bid submitted by the respondent No.3 for some other project in the past was rejected for the same reason. Even bids offered by other Contractors in respect of other Projects were rejected as nonresponsive on applying the same criterion, as is applied to the case of the petitioner. In that sense, it is not a case of impugned decision taken to favour the respondent No.3 nor can be painted as unjust, arbitrary or unreasonable. On the other hand, we must hold that same is in conformity with the tender conditions and which approach has been consistently adopted by the respondents for all the tenders issued by them in the past and the

present one, therefore, just, fair and proper.

20. Counsel for the petitioner had also relied on the decision of the Supreme Court in the case of **Union of India vs. The Central India Machinery Manufacturing Company Ltd. and Others**², in particular paragraph 28 of the said decision, which deals with the approach to be adopted for construction of terms and conditions of the Contract. The Supreme Court has held that a correct construction depends on a reading of the Standard and Special Conditions as a whole. It would not be proper to cull out a sentence here or sub-clause there and read the same in isolation. Further, what is required is not a fragmentary examination in parts but an overall view and understanding of the whole. It is the substance of the documents constituting the Contract, and not merely Form which has to be looked into. We fail to understand as to how this exposition can support the petitioner. On the other hand, it must come to the aid of respondents, who have justified the impugned action on the basis of conjoint reading of the relevant terms and conditions of the subject document.

21. The respondent No.1 has rightly invited our attention to the recent decision of the Supreme Court in the case of **Siemens Aktiengesellschaft and Siemens Limited vs. Delhi Metro Rail**

² (1977) 2 SCC 847

Corporation Limited and Others³. After analyzing host of decisions on the scope of judicial review of administrative decisions, the Supreme Court in paragraph 18 has observed thus;

“18. The principles governing the judicial review of administrative decisions are now fairly well settled by a long line of decisions rendered by this Court since the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* which is one of the earliest cases in which this Court judicially reviewed the process of allotment of contracts by an instrumentality of the State and declared that such process was amenable to judicial review. Several subsequent decisions followed and applied the law to varied situations but among the latter decisions one that reviewed the law on the subject comprehensively was delivered by this Court in *Tata Cellular Case* wherein this Court once again reiterated that judicial review would apply even to the exercise of contractual powers by the Government and government instrumentalities in order to prevent arbitrariness or favouritism. Having said that this Court noted the inherent limitations in the exercise of that power and declared that the State was free to protect its interest as the guardian of its finances. This Court held that there could be no infringement of Article 14 if the Government tried to get the best person or the best quotation for the right to choose cannot be considered to be an arbitrary power unless the power is exercised for any collateral purpose. The scope of judicial review, observed this Court, was confined to the following three distinct aspects:

(i) Whether there was any illegality in the decision which would imply whether the decision-making authority has understood correctly the law that regulates his decision-making power and whether it has given effect to it;

(ii) Whether there was any irrationality in the decision taken by the authority implying thereby whether the decision is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at the same; and

(iii) Whether there was any procedural impropriety committed by the decision-making authority while arriving at the decision.”

22. On the same lines, in the case of **Air India Ltd. vs.**

Cochin International Airport Ltd. and Others⁴, the Supreme

³ (2014) 11 SCC 288

⁴ (2000) 2 SCC 617

Court has restated the legal position. Emphasis has been placed on the exposition in paragraph 7 of this decision, by the respondents.

The same reads thus:

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India*, *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India*, *CCE v. Dunlop India Ltd.*, *Tata Cellular v. Union of India*, *Ramniklal N. Bhutta v. State of Maharashtra* and *Raunaq International Ltd. v. I.V.R. Construction Ltd.* The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. **The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny.** It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. **It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness.** The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. **Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article**

226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. **Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”**

(emphasis supplied)

23. Having given our thoughtful consideration to the case on hand, we have no hesitation in taking the view that non-submission of financial information for the period between 01.04.2010 to 31.03.2011 by the petitioner resulted in infraction of the stipulation contained in Clause 2.2.2.2 of the tender document and for which reason, failure to fulfil the Threshold Technical Capacity. Assuming that sub-clause (i) of the said condition was to be considered as stipulation for taking overall view of the technical capacity and experience of the petitioner, it must be held that the financial information regarding the total sum received by the bidder during the past 5 (five) financial years “preceding the Bid Due Date” alone must be considered, which means, financial information for financial year from 01.04.2010 - 31.03.2011 till 01.04.2014 - 31.03.2015. Any other information will be of no help to the petitioner. However, the petitioner failed to furnish financial information for the financial year 01.04.2010 to 31.03.2011, for

reasons best known to the petitioner. Further, the financial information given by the petitioner for the period from 01.04.2015 to 15.02.2016 cannot be reckoned; and as it is required to be excluded, the petitioner does not qualify the requirement of receipt of Rs.562 Crores to meet the Threshold Technical Capacity, keeping in mind the volume of the present project of Rs.224.82 Crores. Hence, the petitioner must fail notwithstanding the fact that the petitioner had offered lowest bid.

24. The incidental issue raised by the petitioner is about the alleged undue haste shown by the respondent No.1 in awarding the Contract to respondent No.3. This argument is founded on the schedule of bidding process specified in Clause 1.3. The same reads thus;

Sl.No.	Event Description	Date
1.	Purchase of Bid document Start date	21.01.2016 17:31 hrs
2.	Purchase of Bid document End Start date	22.02.2016 17:30 hrs
3.	Late date for receiving queries/Clarifications	01.02.2016 17:30 hrs
4.	Pre-Proposal Conference (Pre-bid meeting)	01.02.2016 15.30 hrs
6.	Bid submission End date (online)	23.02.2016 17.30 hrs
7.	Physical submission of bid	24.02.2016 17.30 hrs
8.	Opening of technical bid	25.02.2016 at 11:00 hrs
9.	Financial proposal (Envelop C) opening	Will be informed later
10.	Opening of Financial BID	Will be informed later
11.	Letter of Award (LOA)	Within 90 days of BID Due Date
12.	Validity of BID	120 days from BID Due Date
13.	Signing of Agreement	Within 15 days of award of LOA.

25. The argument proceeds that after the technical bid was opened on 25.02.2016, the respondent No.1 hastened to issue

Letter Of Award (LOA) in favour of respondent No.3 without doing any other scrutiny. This was done to push the petitioner to a *fait accompli* situation, even after knowledge of filing of the present writ petition on 01.03.2016. Not only that, respondent No.1 hastened the process of signing the agreement – which was executed on 08.03.2016 – inspite of the order passed by this Court on 08.03.2016 to maintain *status quo* as on that day with regard to the subject matter.

26. The argument though attractive at the first blush, deserves to be stated to be rejected for more than one reason. Firstly because, the dates and period specified against each of the activity mentioned in Column description of the Chart, in particular, in respect of Item Nos.10 to 13, is only to provide for an outer limit for completing that process. It is not a provision to wait for the period specified against the stated activity. Secondly, it is true that the present petition was filed on 01.03.2016, however, the same was mentioned before the Court only on 03.03.2016 for listing. It was ordered to be listed on 04.03.2016 when it was adjourned to 08.03.2016 on the request made by the counsel for the respondents for time to take instructions. In that sense, the respondents appeared in the present proceeding and became aware

about the filing of this petition only on 03.03.2016, when copy of the petition was served on the respondent No.1. Incidentally, on the same day, Letter Of Award (LOA) was already issued in favour of the respondent No.3 with regard to the subject contract and it was accepted by the respondent No.3. Indeed, agreement was signed by respondent No.1 in favour of respondent No.3 on 08.03.2016 notwithstanding the knowledge of filing of present petition, but, since there was no interim stay and Letter Of Award was already executed in favour of respondent No.3, the Appropriate Authority of respondent No.1 proceeded in the matter in larger public interest, as is stated in the reply-affidavit. In any case, these facts or circumstances cannot be the basis to answer the core issue on which the bid submitted by the petitioner has been rejected being nonresponsive. Only if the petitioner had succeeded in that contention, it would have become necessary for us to examine this grievance of the petitioner more elaborately or even to undertake microscopic analysis thereof. Suffice it to observe that grievance about undue haste shown by the respondent No.1 does not warrant any further consideration.

27. Taking overall view of the matter, we find that the petition is devoid of merits, hence it deserves to be **dismissed**.

Ordered accordingly.

Interim stay stands vacated forthwith.

(A.M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

shukla